

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

In The Matter of: \_\_\_\_\_ : Proceeding to Assess a Class II  
 : Administrative Penalty Under  
Chesterfield County : Section 309(g) of the Clean Water Act  
9800 Government Center Parkway :  
Chesterfield, VA 23832 : Docket No. CWA-03-2011-0151  
 :  
Respondent : CONSENT AGREEMENT AND  
 : FINAL ORDER

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PROCEDURAL BACKGROUND AND STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Chesterfield County, Virginia ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties have agreed to settlement of the alleged violations of the Clean Water Act by Respondent.
2. The Complainant initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), by issuing an Administrative Penalty Complaint ("Complaint") to Respondent on April 6, 2011.
3. Respondent filed an Answer and made a timely request for a hearing pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B).

**II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.
5. For purposes of this CAFO proceeding, Respondent admits the jurisdictional allegations of the Complaint.

### **III. CONCLUSIONS OF LAW**

6. As described in the Allegations in the Complaint, EPA concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### **IV. GENERAL PROVISIONS**

7. For the purpose of this CAFO proceeding:
- A. Respondent consents to the assessment of the civil penalty (the "Civil Penalty") set forth herein;
  - B. Respondent agrees to undertake all actions required by this Consent Agreement;
  - C. Respondent hereby expressly waives its right to contest the allegations set forth in the Complaint at a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B);
  - D. Respondent waives its right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
8. Each party to this agreement shall pay its own costs and attorney's fees.
9. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 of the CWA, 33 U.S.C. § 1342 or any other law. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
10. This Consent Agreement and the accompanying Final Order resolve the civil claims against the Respondent for the specific violations alleged in the Complaint issued in the above-captioned action. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its effective date.
11. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
12. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one

agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

13. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

#### **V. PENALTY**

14. For the purpose of this proceeding, the Respondent consents to the assessment of the Civil Penalty in the amount of \$77,866.00 in full and complete settlement of EPA's civil claims as set forth in the Complaint alleging violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.
15. The \$77,866.00 penalty as provided for in Paragraph 10 shall be divided as follows: (a) a cash penalty in the amount of \$46,666; and (b) \$31,200.00 (the "amount required to be spent for the SEP") by the implementation of a supplemental environmental project ("SEP").

#### **VI. PAYMENT TERMS**

16. Within thirty (30) days of the effective date of this Order, Respondents shall pay the civil penalty of forty six thousand, six hundred and sixty-six dollars (\$46,666) in the following manner:

- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA-03-2011-0151;
- B. All checks shall be made payable to "United States Treasury";
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197 9000

Contact: Bryson Lehman 513-487-2123

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077

U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL MO C2 GL  
St. Louis, MO 63101

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Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268 0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

- H. On Line Payment Option:

[WWW.PAY.GOV/PAYGOV](http://WWW.PAY.GOV/PAYGOV)

Enter sfo 1.1 in the search field. Open and complete the form.

- I. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- J. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to the following:

U.S. Environmental Protection Agency  
Regional Hearing Clerk (3RC00)  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029;

Ms. Allison Graham  
U.S. Environmental Protection Agency  
Region III (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103-2029;

and

Andrew Duchovnay  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029

17. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative

costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge, not to exceed six percent, will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).


## **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

18. Respondent shall complete a SEP as described in Attachment A, which is incorporated into the CAFO by reference.
19. Respondent hereby certifies that there is no current requirement under any federal, state or local law or regulation for Respondent to perform or develop the SEP within the next five years; nor is Respondent required to perform or develop the SEP by any agreement, grant or injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, or will not receive, credit for the SEP activities in any other enforcement action in any form.
20. Respondent agrees that EPA may request copies of any materials related to the SEP, at any time, upon reasonable advance notice to Respondent, to confirm that the SEP is being or has been performed in accordance with this CAFO. Respondent further agrees to provide requested information to EPA within fourteen (14) days of a reasonable request. The EPA reserves all existing inspection authority.
21. Within 60 days of completion of all SEP work, Respondent shall provide written notice (SEP Report) to EPA of SEP completion, describing all actions taken in furtherance of the SEP. Additionally, Respondent will provide EPA with sufficient documentation to confirm the completion of the SEP and the associated costs incurred and expended by Respondent in completion of the SEP.
22. Following receipt of the SEP Report, EPA, in its sole discretion, which it will not exercise in an arbitrary or capricious manner, may do one of the following: (a) accept the SEP Report; (b) reject the SEP Report and notify the Respondent in writing of the deficiency in the SEP Report and grant the Respondent an additional thirty (30) days from receipt of such notice to correct any deficiency; or (c) determine that the SEP has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 24 of this CAFO.
23. If EPA elects to exercise option (b) as described in the proceeding paragraph, it will permit the Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent.
24. In the event that Respondent fails to comply with any terms or provision of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as set forth in Paragraph 15 of this

CAFO, Respondent shall be liable for additional civil penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, if the SEP has not been completed in accordance with this CAFO, Respondent shall pay an additional civil penalty to the United States of \$31,200.00.
  - (ii) If the SEP is not completed in accordance with the CAFO, but the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent for that SEP was actually expended on the SEP, Respondent shall not be liable for any additional civil penalty.
  - (iii) If the SEP is completed in accordance with the CAFO, but the Respondent spent less than ninety (90) percent of the amount required to be spent for that SEP, Respondent shall pay an additional civil penalty to the United States of \$7,800.00.
  - (iv) If the SEP is completed in accordance with the CAFO and the Respondent spent at least ninety (90) percent of the amount of money required to be spent for the SEP, Respondent shall not be liable for any additional civil penalty.
  - (v) For failure to submit the SEP Report required by Paragraph 21, above, Respondent shall pay an additional civil penalty in the amount of \$250.00 each day after the date that the report is due until the report is submitted.
25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the **work conducted by Respondent and the participating businesses** in connection with the SEP undertaken pursuant to this CAFO.
26. All submissions required herein shall be signed and dated by a responsible official of Respondent to include the following certification:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

Signed   
Title County Administrator  
Date December 22, 2011

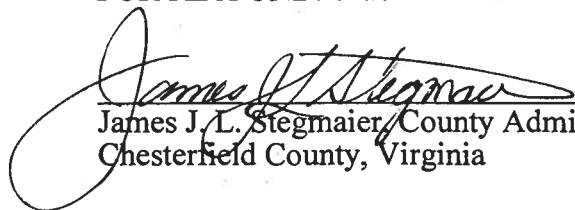
### VIII. EFFECTIVE DATE

This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

### IX. SIGNATURE

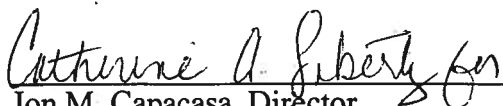
The undersigned representative of Respondent certifies that he or she is fully authorized to enter in to the terms and conditions of this CAFO and to legally bind the Respondent.

FOR RESPONDENT:

  
James J. L. Stegmaier, County Administrator  
Chesterfield County, Virginia

12/22/2011  
Date

FOR EPA:

  
Jon M. Capacasa, Director  
Water Protection Division  
Environmental Protection Agency  
Region III

12/28/11  
Date



SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,

this 28<sup>th</sup> day of December, 2011

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Shawn M. Garvin  
Regional Administrator  
EPA, Region III



**SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSAL**  
**In the Matter of Chesterfield County, Virginia**  
**Docket No. CWA-03-2011-0151**

1. Total Program Costs:

- a. Spill kits (individual and total # needed)  
We would order four different types of kits for distribution that would suit a variety of business needs. We would order a total of 220 kits for a cost of \$21,202.50 with estimated shipping costs of \$350 for a total of \$21,552.50.  
  
PIG Portable Spill Response Bag for Oils, Solvents & Water \$97 - 55 kits  
PIG Portable Spill Response Bag for Oils \$98.50 - 55 kits  
PIG GoBox Spill Cabinet for Oils, Solvents, and Water \$91 - 55 kits  
PIG GoBox Spill Cabinet for Oils only \$99 - 55 kits
- b. Program administration
  - 1 hour staff time to help each interested business develop a SWPPP using our template. 220 hours
  - Coordinate purchase of kits and distribute to businesses. 220 hours
  - Develop and maintain tracking system to record which businesses received spill kits, the type of spill kit received, which completed a SWPPP, and marked storm drains. 25 hours
- c. Storage
  - Store the kits in the Drainage Shop.
- d. Placards (1000) for storm drain marking @ \$3.00 each = \$3,000.00
- e. Publication for kits  
Estimate: \$1000
- f. Mailings (1000)
  - Printing: 1000 postcards: \$500.00
  - Postage: 1000 pieces @ \$0.27 = \$270.00
- g. Educational Material
  - Certificates for businesses that get a kit, complete a SWPPP, and mark storm drains: \$200.00

2. List Spill Kit Contents

- a. PIG Portable Spill Response Bag for Oils, Solvents & Water (\$97) – 55 kits
  - 4 - 48" PIG® BLUE Absorbent Socks
  - 28 - PIG® Universal Mat Pads
  - 5 - Temporary Disposal Bags
  - 5 - Ties
  - 1 - 21.75" L x 17.25" W x 7.25" D Carry Bag
- b. PIG Portable Spill Response Bag for Oils (\$98.50) - 55 kits
  - 4 - 48" PIG® Oil-Only Socks
  - 28 - PIG® Oil-Only Mat Pads
  - 5 - Temporary Disposal Bags

5 - Ties  
1 - 21.75" L x 17.25" W x 7.25" D Carry Bag

c. PIG GoBox Spill Cabinet for Oils, Solvents, and Water (\$91) - 55 kits

30 - PIG® Universal Mat  
3 - PIG® BLUE Absorbent Sock  
1 - PIG® Pillows  
50 - PIG® Heavy-Duty Maintenance Wipers  
1 - Goggles  
1 - Nitrile Gloves  
2 - Temporary Disposal Bags  
5 - Ties

d. PIG GoBox Spill Cabinet for Oils (\$99) - 55 kits

30 - PIG® Oil-Only Mats in a Bench Box® Dispenser  
3 - PIG® Oil-Only Absorbent Socks  
1 - PIG® SKIMMER Pillows  
1 - Goggles  
1 - Nitri-Solve® Nitrile Gloves  
2 - Temporary Disposal Bags  
5 - Ties

**Supplies, outreach material: \$26,522.50**

**Approximately 465 staff hours @ 28.00/hr = \$13,020.00**

**Estimated Total: \$39,542.50**

In Re: Chesterfield County, Virginia,  
Docket No. CWA-03-2011-0151

CERTIFICATE OF SERVICE

I certify that on this date I filed the original and one copy of the Consent Agreement and Final Order in connection with the above referenced case with the Regional Hearing Clerk and directed that copies be mailed to the following persons:

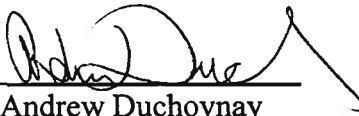
By Pouch mail to:

The Honorable Susan L. Biro, Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, DC 20005  
(Courtesy copy emailed as well, on this date)

By first class mail to:

Julie Seyfarth, Esq.  
Assistant County Attorney  
County of Chesterfield  
9901 Lori Road, Suite 300  
Chesterfield, VA 23832-0040  
(Courtesy copy emailed as well, on this date)

Date: 12/28/11

  
Andrew Duchovnay  
Sr. Asst. Regional Counsel